IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9843 of 2006
With
SPECIAL CIVIL APPLICATION No. 13040 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAMPALAL GOPIRAM AGRAWAL & 5 - Petitioner(s)
Versus
JAYANTIJI KHODAJI THAKORE & 10 - Respondent(s)

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Appearance :

Special Civil Application No. 9843 of 2006:

Mr. AJ Patel for Mr. Shital Patel, for the petitioners.
Mr. Dipak R. Dave, advocate for respondent Nos.1 to 10.
Mr. Bharat J. Shelat with Mr. Deepak Joshi, for respondent No.11.

Special Civil Application No. 13040 of 2006:
Mr. Bharat J. Shelat with Mr. Deepak Joshi, for the petitioner.
Mr. AJ Patel for Mr. Shital Patel, for respondent Nos.1 to 6.
Mr. Dipak R. Dave, for respondent Nos.7 to 16.

CORAM: HONOURABLE MR JUSTICE A.M. KAPADIA

Date: 18.07.2006

COMMON ORAL JUDGMENT

1. **Rule.**

(i) Mr. Dipak R. Dave, learned advocate appears and waives service of notice of rule on behalf of respondent Nos.1 to 10 whereas Mr. Deepak Joshi, learned advocate appears and waives service of notice of rule on behalf of respondent No.11 in Special Civil Application No. 9843 of 2006.

(ii) Mr. Shital Patel, learned advocate appears and waives service of notice of rule on behalf of respondent Nos.1 to 6 whereas Mr. Dipak R. Dave, learned advocate appears and waives service of notice of rule on behalf of respondent Nos.7 to 16 in Special Civil Application No. 13040 of 2006.

2. What is challenged in these two petitions filed under Articles 226 and 227 of the Constitution of India is the order dated

23.2.2006 recorded below application Ex.85 in Regular Civil Suit No.432 of 1995 by the learned Civil Judge (SD), Ahmedabad Rural at Navrangpura, by which the application Ex.85 filed by respondent No.11, Ganesh Sagar Infrastructure Private Limited, a company registered under the provisions of the Companies Act, seeking to add proposed 20 issues mentioned in the application came to be partly allowed and thereby proposed issue Nos.2, 3 and 10 mentioned in the said application have been ordered to be added as issue Nos. 6-A, 6-B and 6-C in the issues framed earlier vide Ex.50.

3. Since both these petitions arise out of one and common order with regard to the same subject matter – property i.e., land bearing Survey Nos.103/1, 103/2, 103/3, 103/4, 103/5, 103/6, 104/1, 104/2 and 104/3 of village Thaltej ('suit land' for short) and also the controversy involved in these two petitions runs in a narrow compass with regard to framing of additional issues, with the consent of the learned advocates

appearing for the parties, both these petitions are taken up for final hearing today, heard together and decided by this common judgment.

4. The petitioners of Special Civil Application No. 9843 of 2006 are the plaintiffs in Regular Civil Suit No.432 of 1995 whereas petitioner of Special Civil Application No.13040 of 2006 is defendant No.16 in the said suit. Therefore, for the sake of brevity and convenience, the parties are hereinafter referred to as the “plaintiffs” and “defendant No.16”.

5. In order to appreciate the controversy raised in these two petitions in a better perspective, it would be advantageous and convenient to refer to the facts stated in Special Civil Application No. 9843 of 2006, which is arising out of the order passed below application Ex.85 in Regular Civil Suit No.432 of 1995.

6. Since the main controversy involved in these

two petitions centres around the framing of three additional issues proposed by defendant No.16 with regard to the genuineness of the will executed by deceased Jyotiben in favour of the plaintiffs in respect of agricultural land bearing Survey No. 966/1 of Ognaj village and on the basis of the said will acquisition of status of 'agriculturists' by the plaintiffs and the said issue has direct bearing on the question of ownership right on the basis of the sale deed conveyed to the plaintiffs as well as defendant No.16 by the erstwhile owners, it is necessary to advert to the factual background of the case in detail.

(i) The erstwhile owners entered into an agreement to sale of the suit land on 12.11.1981 with the plaintiffs and as per the terms and conditions of the agreement to sale, possession of the suit land was also handed over to the plaintiffs.

(ii) Before entering into the agreement to sale,

the plaintiffs were holding two parcels of agricultural land -

(a) S.No.1526/65 of Ognaj village purchased on 17.10.1979. Mutation Entry No.1933 was entered on 18.10.1979 in their name. The said entry has reached finality in view of the order dated 19.9.2003 passed in Special Civil Application No.12055 of 2003 by this Court;

(b) Survey No.966/1 of Ognaj village, pursuant to the will dated 17.2.1975, of deceased Jyotiben, widow of Chaturbhai Hirabhai, in favour of the plaintiffs. Mutation Entry No.2526 dated 27.4.1984 was certified on 2.6.1984. Therefore, the plaintiffs have acquired the status of 'agriculturists' prior to the year 1986.

(iii) Thereafter in respect of the suit land, a registered sale deed was executed in the year 1986 on payment of the entire sale consideration by the plaintiffs to the erstwhile owners.

(iv)After execution of the sale deed in favour of the plaintiffs by the erstwhile owners, one of

the erstwhile owners, made an application to the Mamlatdar and ALT by instituting Case No.106 of 1991 which was registered under Section 84C of the Bombay Tenancy & Agricultural Lands Act, 1948 ('the Act' for short) on the ground that the plaintiffs were not agriculturists at the time of entering into the transaction for purchase of the suit land in the year 1986 and, therefore, the sale deed was in breach of Section 63 of the Act.

(v) Having heard the parties, the Mamlatdar & ALT dropped the proceedings initiated under Section 84C of the Act against the plaintiffs vide order dated 26.12.1991.

(vi)The order dated 26.12.1991 passed by the Mamlatdar & ALT was taken in suo motu revision under Section 76A of the Act by the Deputy Collector in Tenancy Revision Case No.991 of 1992. After hearing the parties, the Deputy Collector upheld the order passed by the Mamlatdar & ALT.

(vii) In the meanwhile, mutation entry Nos.7201 to 7205 were entered in village Form No.6 in respect of the registered sale deed executed in favour of the plaintiffs in the year 1986 by the erstwhile owners of the suit land. However, in respect of the said entries of sale, defendant No.16, through its Chairman, filed objections before the Mamlatdar & ALT asking him not to certify the aforesaid entries of sale deed of the plaintiffs on the premises that the original owners have sold the suit land to it in the year 1992. Since there was also a conveyance deed in favour of defendant No.16 by the erstwhile owners, mutation entry Nos.7006 to 7010 were entered in village Form No.6.

(viii) Against the mutation entries made in favour of defendant No.16, a dispute was raised by the plaintiffs. However, the Mamlatdar & ALT certified the entries in favour of defendant No.16 and mutation entry Nos.7201 to 7205 were transferred to disputed register and instituted Disputed Case Nos.7/94 to 11/94 and passed order

dated 20.3.1995 against the plaintiffs.

(ix)Against the order dated 20.3.1995, the plaintiffs filed RTS Appeal No.82/94-95 and 44/95-96 to 48/95-96 and the said appeals were allowed by the Deputy Collector, Viramgam Prant vide order dated 3.1.1996 and entry Nos.7006 to 7010 made in favour of defendant No.16 were set aside and mutation entry Nos.7201 to 7205 were approved and the order of Mamlatdar dated 20.3.1995 was set aside.

(x) Against the order dated 3.1.1996 passed by the Deputy Collector, Viramgam Prant, defendant No.16 filed Revision Application No.130 of 1996 before the Collector, Ahmedabad and the Collector, Ahmedabad rejected the said revision application.

(xi)The order of the Collector, Ahmedabad was carried further before the Special Secretary, Revenue Department, in Revision Application No.12 of 1996 by defendant No.16 and the Revision

Application No.12 of 1996 was also rejected vide order dated 28.11.2003.

(xii) Aggrieved by the order dated 28.11.2003 passed by the Special Secretary, Revenue Department, defendant No.16 filed a review petition against the said order which was also rejected vide order dated 16.2.2005.

(xiii) In the meanwhile, proceedings under Section 84C of the Act were initiated in respect of the sale deed entries made in favour of the plaintiffs. However, the Deputy Collector, by order dated 27.1.1993, rejected the revision application and confirmed dropping of 84C proceedings by the Mamlatdar & ALT.

(xiv) Against the order dated 27.1.1993 passed in Revision Application No.391 of 1992, two sets of revision application were filed i.e., Revision Application No.TEN-BA 342 was filed by defendant No.16 and Revision Application No. TEN-BA 742 of 1993 was filed by original owners, later on

before the Gujarat Revenue Tribunal. Both these revision applications were opposed by the plaintiffs. The Tribunal by a common order dated 25.4.2000, held that the plaintiffs have duly purchased the suit land from the original owners in 1981 and 1986 respectively and also held that subsequent purchaser, i.e., defendant No.16 has no locus standi and the case of defendant No.16 is not tenable at all. The Tribunal has also held that the plaintiffs are agriculturists and were agriculturists while purchasing the suit land in the year 1986 and accordingly rejected both the revision applications.

(xv) Against the order dated 25.4.2000 passed by the Gujarat Revenue Tribunal in both the revision applications, two review applications, i.e., TENCA No.19 of 2000 and TENCA No.21 of 2000 were filed by defendant No.16 and the original owners of the suit land, respectively. Both the review applications were rejected by the Gujarat Revenue Tribunal by a reasoned order. In the said order also it has been clearly held that the

sale in question in favour of the plaintiffs is prior in point of time and, therefore, the second sale in favour of defendant No.16 is absolutely invalid and ineffective.

(xvi) Against the said order passed by the Gujarat Revenue Tribunal, defendant No.16 filed Special Civil Application No.3212 of 2001 before this Court. This Court vide order dated 4.5.2001 disposed of the petition as it was unconditionally withdrawn.

(xvii) According to the plaintiffs, erstwhile owners made an attempt to interfere with the possession of the suit land, therefore, the plaintiffs apprehending that the erstwhile owners will take law in their hands, filed four suits being Regular Civil Suit Nos. 429 of 1995 to 432 of 1995 in the Court of learned Civil Judge (SD), Ahmedabad Rural, seeking a perpetual injunction and praying for various reliefs. Along with the said suits, the plaintiffs also filed application Ex.5 seeking ad-interim relief during the

pendency of the suits and also for preparing panchnama. Pursuant to the said application, a Court Commissioner was appointed, who made a report on 29.5.1995 to the effect that the plaintiffs are in actual and physical possession of the suit land.

(xviii) After hearing the learned advocates appearing for the parties and on the basis of the report dated 29.5.1995 submitted by the Court Commissioner, the learned trial Judge allowed the application Ex.5 seeking ad-interim relief during the pendency of the suits, in favour of the plaintiffs.

(xix) Aggrieved thereby, the erstwhile owners preferred Civil Misc. Appeal No.210 of 1997 in the District Court, Ahmedabad Rural, and the learned District Judge, who heard the appeal, dismissed it vide order dated 19.4.1999.

(xx)It is pertinent to note at this stage that the question whether the plaintiffs were

agriculturists at the time of purchase of the suit land or not was raised at the interim stage and the appellate court held that the appropriate authority has already held that the plaintiffs were agriculturists and also found that the plaintiffs were in possession of the suit land by virtue of supplementary agreement dated 12.11.1981.

(xxi) Against the order dated 19.4.1999 passed in Civil Misc. Appeal No.210 of 1997 by the District Court, Ahmedabad Rural, Civil Revision Application Nos.1206 of 1999 to 1208 of 1999 were filed before this Court and the said revision applications were permitted to be withdrawn vide order dated 7.12.2005.

(xxii) It is pertinent to note that simultaneously defendant No.16 had also filed Regular Civil Suit No.458 of 1995 against the plaintiffs. Along with the suit, defendant No.16 also filed application seeking ex-parte ad-interim injunction against the plaintiffs with

regard to the suit land. The learned trial Judge granted the application seeking ad-interim injunction in favour of defendant No.16.

(xxiii) Against the said order, the plaintiffs filed Civil Misc. Appeal No.77 of 1995 in the District Court, Ahmedabad Rural. Along with the appeal, application Ex.5 was also filed and on the said application, the District Court passed an order staying the order of the trial court and also directing to draw another panchnama and in that proceeding also a Court Commissioner was appointed who found that the plaintiffs were in possession of the suit land. Ultimately, the District Court passed an order in Civil Misc. Appeal No.77 of 1995 setting aside the ex-parte order passed by the trial court below Ex.5 application and the matter was remanded to the trial court for deciding the application Ex.5 afresh on merits after hearing the parties and the parties were directed to maintain status quo.

(xxiv) Before the trial court the learned

advocates appearing for the parties had shown their readiness and willingness to proceed with the hearing of the suit on day-to-day basis and accordingly, the trial court disposed of Ex.5 application directing both the parties to maintain status quo.

(xxv) Thereafter defendant No.16 filed an application under the provisions of Order 1 Rule 10 of the Code of Civil Procedure ('the Code' for short) in Regular Civil Suit No.432 of 1995, for joining it as a necessary party. The learned trial Judge allowed the said application.

(xxvi) After impleading defendant No.16 as party, defendant No.16 filed its written statement and thereafter also filed application Ex.85 seeking to raise 20 more issues as proposed in the said application.

(xxvii) After having heard the learned advocates appearing for the parties, the learned trial Judge allowed the application Ex.85 filed by

defendant No.16 in part and accordingly added three more issues in the issues which were already framed vide Ex.50. In other words, by partly allowing the application Ex.85, the learned trial Judge has permitted defendant No.16 to raise issue Nos.2, 3 and 10, out of 20 issues proposed by defendant No.16 in application Ex.85, as issue Nos.6-A, 6-B and 6-C in the issues already framed vide Ex.50, whereas the prayer for raising rest of the issues proposed in the application Ex.85 has been rejected. It is this order which is now on the anvil of scrutiny before this Court in these two petitions, one being Special Civil Application No. 9843 of 2006 filed by the plaintiffs and another being Special Civil Application No.13040 of 2006 filed by defendant No.16.

7. Mr. A.J. Patel, learned advocate appearing for Mr. Shital Patel, learned advocate of the plaintiffs, at the outset submitted that it is true that issues can be recast and additional issues can be framed at any stage of the

proceedings. However, issues are to be framed on the basis of the pleadings of the parties and pleadings must be in consonance with the previous litigations between the parties. In instant case, defendant No.16 has been litigating with the plaintiffs since 1995 and prior thereto also defendant No.16 was aware about all the proceedings initiated before various revenue authorities as well as Civil Courts and also this Court. Therefore, according to Mr. AJ Patel, learned advocate of the plaintiffs, defendant No.16 was very much acquainted with the proceedings which have already reached to finality. Notwithstanding it, defendant No.16 has raised several irrelevant contentions in its written statement filed in the suit instituted by the plaintiffs being Regular Civil Suit No.432 of 1995 and after considering the said contentions, the learned trial Judge has passed appropriate orders and the lis is already concluded upto the High Court and now on the basis of the same contentions, defendant No.16 wants that some more irrelevant issues are framed so that the matter

can be delayed. According to Mr. Patel, in fact these issues have already been decided, therefore, the principles of res-judicata, estoppal and acquiescence would apply to the facts of the present case. Therefore, on the basis of the said principles, the issues which have been permitted to be added by the trial court in the issues already framed vide Ex.50 do not stand to scrutiny of this Court.

(i) It is also asserted by Mr. Patel, learned advocate of the plaintiffs, that so far as the question as to whether the plaintiffs are agriculturists or not, it has been already determined by all the authorities upto the High Court, in favour of the plaintiffs, therefore, the said question is now not open to the scrutiny of the Civil Court. Besides this, defendant No.16 is a stranger. It has nothing to do with the question as to whether the plaintiffs are agriculturists or not. This is a question between the plaintiffs and erstwhile owners and erstwhile owners have raised the said question

before the revenue authorities, Civil Court as well as this Court and all the authorities and Courts all throughout held in favour of the plaintiffs that the plaintiffs have become agriculturists on the basis of the will executed by one Jyotiben.

(ii)So far as the will executed by Jyotiben in favour of the plaintiffs is concerned, in that regard also so many proceedings have been initiated by the erstwhile owners. Ultimately the said will was found to be genuine and on the basis of the said will, the plaintiffs have become agriculturists and, therefore, it is now not open to the civil court to examine the question as to whether the will was genuine or forged one.

(iii) So far as the petition filed by the plaintiffs labelling it as a petition filed under Article 226 of the Constitution of India is concerned, Mr. Patel, learned advocate of the plaintiffs, conceded that the petition is filed

under Article 227 of the Constitution. He also fairly conceded that the scope of a petition filed under Article 227 of the Constitution is very limited, confined only to correcting the jurisdictional error. In instant case, the trial court has committed jurisdictional error by adding three more issues in the issues already framed vide Ex.50, though the said issues have been decided by the revenue authorities, Civil Court and upto the High Court in favour of the plaintiffs. Therefore, this Court in exercise of the supervisory jurisdiction vested in it under Article 227 of the Constitution, can correct the jurisdictional error committed by the trial court as there is no embargo for correcting jurisdictional error committed by the trial court in a petition filed under Article 227 of the Constitution.

(iv) The sum and substance of the submissions advanced by Mr. AJ Patel, learned advocate of the plaintiffs, is that the plaintiffs are agriculturists, they purchased the suit land from

the erstwhile owners and the erstwhile owners have executed sale deed in their favour, on the basis of the sale deed, mutation entries have been made and certified by the concerned revenue authorities and the proceedings initiated against the plaintiffs have also been decided in favour of the plaintiffs all throughout. Moreover, according to Mr. Patel, years together would be required for taking a decision on the additional issues framed pursuant to the impugned order passed by the learned trial Judge, and the said issues, which are not at all relevant and germain to the facts of the present case and are already decided by the concerned revenue authorities and upto this High Court, are raised with a malafide intention to delay the trial.

(v) He, therefore, prayed that the petition filed by the plaintiffs being Special Civil Application No.9843 of 2006 deserves to be allowed whereas the petition filed by defendant No.16 being Special Civil Application No.13040 of 2006 deserves to be rejected and thereby the

order dated 23.2.2006 passed below application Ex.85 in Regular Civil Suit No.432 of 1995 so far as it relates to framing of additional three issues is concerned, may be quashed and set aside whereas non-framing of remaining issues may be upheld, to put it differently, the application Ex.85 may be rejected in toto. He, therefore, urged that Special Civil Application No.9843 of 2006 which is filed by the plaintiffs may be allowed whereas Special Civil Application No. 13040 of 2006 filed by defendant No.16 may be dismissed.

8. Per contra, Mr. Bharat J. Shelat, learned advocate with Mr. Deepak Joshi, learned advocate of defendant No.16, raised preliminary objection that the petition filed by the plaintiffs is in fact a petition under Article 227 of the Constitution of India and hence it is not open for this Court to examine all these aspects with regard to the legality and validity of the order passed by the trial court by which additional three issues, as proposed by defendant No.16,

were added in the issues already framed vide Ex.50, as the learned trial Judge has committed no jurisdictional error in framing the additional issues proposed by defendant No.16. Besides this, it is also emphasized by him that so far as the will executed by Jyotiben in favour of the plaintiffs is concerned, defendant No.16 was not a party before the authority before whom the will was challenged nor defendant No.16 was a party in the proceedings initiated before the revenue authorities by the erstwhile owners. Defendant No.16 for the first time has come in the picture while opposing four suits filed by the plaintiffs and, therefore, it is its legitimate right to raise all contentions before the Civil court.

(i) So far as the decision arrived at in the revenue proceedings with regard to the mutation entries in village Form No.6 is concerned, according to Mr. Shelat, it does not determine the title of the parties but it is merely relevant for fiscal purpose and, therefore, the learned trial Judge has to examine the issues

with regard to the title of the property in civil suit filed by the plaintiffs and counter civil suit filed by defendant No.16 and according to him, all the issues proposed by defendant No.16 are relevant and the learned trial Judge ought to have allowed the application Ex.85 in toto.

(ii) On aforesaid premises, according to him, no illegality or irregularity much less jurisdictional error has been committed by the learned trial Judge in adding three additional issues as issues Nos.6-A, 6-B and 6-C while passing order below application Ex.85 and therefore the impugned order does not call for any interference of this court in a petition field under Article 227 of the Constitution of India. According to him, the trial court ought to have framed all the issues proposed by defendant No.16 in the application Ex.85 and by not adding all the 20 issues proposed by defendant No.16 in application Ex.85 as additional issues in the issues already raised vide Ex,50, the trial court

has committed jurisdictional error which is required to be rectified in this petition filed by defendant No.16 i.e., Special Civil application No.13040 of 2006 and, therefore, the impugned order passed by the learned trial Judge is required to be modified by allowing the application Ex.85 in toto and thereby all the issues proposed by defendant No.16 in the said application may be added in the issues framed earlier vide Ex.50. He, therefore, prayed that the petition filed by the plaintiffs being Special Civil Application No.9843 of 2006 is devoid of any merits and deserves to be rejected while the petition filed by defendant No.16 being Special Civil Application No.13040 of 2006 deserves to be allowed by modifying the order passed by the learned trial Judge below application Ex.85 and thereby allowing the said application in toto and by adding all the proposed 20 issues as additional issues in the issues already framed vide Ex.50. He, therefore, urged that Special Civil Application No.13040 of 2006 filed by defendant No.16 may be allowed and

Special Civil Application No. 9843 of 2006 filed by the plaintiffs may be dismissed.

9. This Court has considered the submissions advanced by Mr. AJ Patel, learned advocate of the plaintiffs and Mr. BJ Shelat, learned advocate of defendant No.16 and also perused the impugned order as well as relevant documents forming part of both these petitions.

10. The main controversy involved in these two petitions centres around the framing of additional three issues on the basis of the application Ex.85 submitted by defendant No.16 in Regular Civil Suit No.432 of 1995 filed by the plaintiffs against the erstwhile owners as well as defendant No.16, therefore, this Court is required to find out whether those three additional issues which have been framed and other 17 issues which have not been framed as sought to be canvassed by defendant No.16 are necessary issues to adjudicate the dispute between the plaintiffs and defendant No.16 with

regard to the suit land.

11. There is no dispute that the suit land was owned by erstwhile owners who are defendant Nos.1 to 12 in Regular Civil Suit No.432 of 1995, who have sold the suit land to the plaintiffs for which erstwhile owners have entered into an agreement to sale with the plaintiffs on 12.11.1981. On the basis of the said agreement to sale, registered sale deed was also executed by the erstwhile owners in favour of the plaintiffs on 5.3.1986 on payment of full consideration by the plaintiffs.

12. There is also no dispute that the very suit land was also sold by the erstwhile owners to defendant No.16 in the year 1992, therefore, two sale deeds, one in favour of the plaintiffs which is earlier in point of time whereas second in favour of defendant No.16 which is later in point of time were executed by same erstwhile owners.

13. The contention which is sought to be

canvassed by defendant No.16 is that earlier sale deed executed in favour of the plaintiffs is void ab-initio as on the day of the execution of the agreement to sale as well as sale deed, the plaintiffs were not agriculturists within the meaning of Section 2 (2) of the Act and, therefore, transaction between the erstwhile owners who were agriculturists and the plaintiffs who were not agriculturists was hit by Section 63 of the Act as such a transaction is barred in favour of a non-agriculturist as the plaintiffs were non-agriculturists on the day of the sale deed and, therefore, according to defendant No.16, those issues are very much material to adjudicate the claim made by the plaintiffs against the erstwhile owners as well as defendant No.16 against erstwhile owners and the plaintiffs.

14. It is also sought to be canvassed that the plaintiffs have created bogus document of will alleged to have been executed by Jyotiben in the year 1975 though in fact she has died much

earlier, i.e., in 1968 to prove the fact that by virtue of the said will the plaintiffs have been bequeathed the agricultural land and, therefore, they have become agriculturists. All these documents are bogus and fabricated and therefore issues proposed in this connection are required to be adjudicated against the claims made against each other and according to defendant No.16, even though the revenue proceedings have been ultimately decided in favour of the plaintiffs, still it is open for the civil court to examine the said question and in these circumstances all those issues proposed in application Ex.85 are very much necessary to adjudicate the claim made in all these suits filed against each other.

15. In light of the aforesaid submissions, we have to examine whether the plaintiffs are in fact 'agriculturists' within the meaning of Section 2 (2) the Act on the day when the sale deed dated 5.3.1986 was executed by the erstwhile owners in favour of the plaintiffs.

16. According to the plaintiffs, before entering into the transaction with the erstwhile owners with regard to the suit land, they were holding two parcels of agricultural land, (i) Survey No.1526/65 of Ognaj village which was purchased on 17.10.1979 and mutation entry No.1933 was entered in this regard on 18.10.1979 (As per the finding recorded in Special Civil Application No.12055 of 2003 which came to be disposed of on 19.9.2003 by this Court in favour of the plaintiffs) and (ii) Survey No.966/1 of Ognaj village pursuant to the will dated 17.2.1975 executed by deceased Jyotiben, widow of Chaturbhai Hirabhai, for which mutation entry No.2526 dated 27.4.1984 was made which came to be certified on 2.6.1984.

17. At this stage, it is appropriate to mention that proceedings under Section 84C of the Act were initiated at the instance of the heirs of deceased Jyotiben, who has executed the will in favour of the plaintiffs in respect of the land bearing Revenue S. No.966/1 of Ognaj village. The

said case was registered as Case No.112 of 1994 in respect of S.No.966/1 of Ognaj village as heirs of deceased Jyotiben challenged the will executed by deceased Jyotiben and the Mamlatdar and ALT ultimately vide order dated 26.4.1996 dropped the proceedings initiated under Section 84C of the Act by holding in favour of the plaintiffs. Aggrieved thereby the heirs of deceased Jyotiben had filed Ganot Appeal No.97 of 1996 before the Deputy Collector who vide his order dated 29.6.1996 confirmed the order of the Mamlatdar and ALT. The order passed by the Deputy Collector was also subject matter of challenge in Gujarat Revenue Tribunal in TEN BA No.896 of 1996 which ultimately came to be withdrawn. In this view of the matter, according to this Court, the dispute with regard to the land bearing S.No.966/1 of Ognaj village is concluded by the revenue authorities in favour of the plaintiffs and it has become final and, therefore, the issue as to whether on the basis of the will executed by deceased Jyotiben in favour of the plaintiffs, the plaintiffs have become agriculturists has

reached to finality.

18. It is pertinent to mention that in respect of the land bearing S.No.966/1 admeasuring 0.Acres 21 Gunthas of Ognaj village, mutation entry No.2526 was entered on 27.4.1984 on the basis of the will executed by deceased Jyotiben in favour of the plaintiffs. The Collector, Ahmedabad had issued notice under Section 108 (6) of the Bombay Land Revenue Code as the said land was mortgaged to the Government. After hearing the parties, mutation entry No.2526 dated 27.4.1984 was cancelled and a direction was issued to the Mamlatdar & ALT, Dascroi to initiate proceedings for breach of the provisions of Section 63 of the Act. Against the said order, the plaintiffs filed Revision Application before the Special Secretary, Revenue Department. The Special Secretary, Revenue Department, vide order dated 19.6.2003 dismissed the Revision Application. Aggrieved by the said order, the plaintiffs filed Special Civil Application No.12055 of 2003 before this Court and in the said petition all the

issues which were sought to be raised before the revenue authority were canvassed and this Court vide judgment and order dated 19.9.2003 passed in the said petition, answered all the contentions raised in the petition by holding in favour of the plaintiffs and held that the will executed by deceased Jyotiben in favour of the plaintiffs was a valid will and, therefore, the order passed by the Special Secretary, Revenue Department, confirming the order of the Collector, Ahmedabad cancelling the mutation entry in favour of the plaintiffs was quashed and set aside and ultimately that entry was restored. To put it differently, by virtue of the order passed by this Court in Special Civil Application No.12055 of 2003 it is duly proved that the will executed by deceased Jyotiben was a valid one and on the basis of the said will the plaintiffs have acquired the status of 'agriculturists”.

19. It is also required to be noted that so far as the genuineness of the will executed by deceased Jyotiben in favour of the plaintiffs is

concerned, it can be challenged by the heirs and legal representatives of deceased Jyotiben only and none else. Even if one wants to challenge it on the ground of fraud or misrepresentation, a stranger like defendant No.16 cannot challenge the validity or genuineness of the said will. In instant case, even though the said proceedings have reached to its finality, defendant No.16 has tried to canvass that the will was forged and therefore the plaintiffs were not agriculturists on the basis of the said will and, therefore, it wants to add additional issues with regard to the will executed by deceased Jyotiben can never be countenanced.

20. Even if one wants to challenge the will on the ground of fraud or misrepresentation, in that case also the will has to be challenged within the time prescribed under the Limitation Act and in that event the suit filed by defendant No.16 is hopelessly barred by limitation and, therefore, also the question of entertaining the issue of will in the present matter does not

arise at all.

21. It is to be noted at this stage that heirs of deceased Jyotiben had also filed a criminal complaint against the plaintiffs with regard to the forged will purported to be executed by Jyotiben in favour of the plaintiffs with regard to the land bearing Revenue Survey No.966/1 situated at Ognaj village in which ultimately, after investigation, the investigating officer found the will to be a genuine one and sought for 'C' summary which came to be granted.

22. The plaintiffs have filed four suits being Regular Civil Suit Nos.429 to 432 of 1995 and defendant No.16 has filed Regular Civil Suit No.458 of 1995. Therefore, both the parties have filed suits way back in the year 1995. However, defendant No.16, after ten years, has joined itself as party in Regular Civil suit No.432 of 1995 filed by the plaintiffs and thereafter filed application Ex.85 for framing additional issues.

23. At the cost of repetition, be it stated that the issue with regard to the genuineness of the will executed by deceased Jyotiben in favour of the plaintiffs has been concluded long back in the proceedings initiated by the heirs and legal representatives of deceased Jyotiben and now it is not open for defendant No.16, who is a stranger, to canvass the issue that the will was forged and fabricated and on the basis of the said will issues are required to be added. Therefore, according to this court, the additional issues proposed by defendant No.16 who is a stranger to the said proceeding with regard to the will executed by deceased Jyotiben are thoroughly irrelevant, misconceived and have no merits whatsoever and those issues are abusive and undermining all the judgments rendered by all the courts including this Court, therefore, shall have to be quashed and set aside.

24. The matter did not rest there. One of the erstwhile owners of the suit land made an application to Mamlatdar & ALT to initiate

proceedings under the provisions of Section 84C of the Act against the plaintiffs as, according to him, the sale of the suit land in favour of the plaintiffs by the erstwhile owners was in violation of the provisions of Section 63 of the Act. Therefore, the Mamlatdar & ALT initiated the proceedings under Section 84C of the Act which ultimately came to be dropped vide order dated 26.12.1991. The said order was taken into revision under Section 76A before the Deputy Collector, who vide order dated 27.1.1993 upheld the order passed by the Mamlatdar & ALT. Aggrieved thereby, two revision applications were filed before the Gujarat Revenue Tribunal. TEN BA No.743 of 1993 was filed by the erstwhile owners whereas TEN BA No.342 of 1993 was filed by defendant No.16. Both these revision applications were opposed by the plaintiffs and the Gujarat Revenue Tribunal vide order dated 25.4.2000 held that the plaintiffs have duly purchased the suit land and there was no violation of the provisions of section 63 of the Act. The Tribunal also held that defendant No.16 has no locus standi and its

case is not tenable. The Tribunal also recorded a concrete finding that the plaintiffs are agriculturists and were agriculturists in the year 1986 when the sale deed was executed in their favour by the erstwhile owners of the suit land. The said order was also subject matter of review before the Gujarat Revenue Tribunal. The Tribunal rejected the revision applications filed by them. Aggrieved by the said order, defendant No.16 took the matter to this Court by filing Special Civil Application No.3212 of 2001. This court did not entertain the petition and, therefore, the said petition was permitted to be withdrawn unconditionally vide order dated 4.5.2001 passed by this Court.

25. Looking to the aforesaid events, proceedings under Section 84C of the Act were initiated upto this Court by the erstwhile owners as well as defendant No.16 who has no locus standi and they have lost the matter all throughout. Both of them reiterated that the plaintiffs are not agriculturists but neither the Tribunal nor this

Court countenanced with the argument and ultimately the proceedings under Section 84C were dropped and it was ultimately held that the plaintiffs are agriculturists.

26. At this stage, it is also pertinent to note that even if we accept the argument of defendant No.16 in that case also if it is held in the proceedings initiated under the provisions of Section 84C of the Act that the transaction of the land situated at Thaltej village is in violation of Section 63 of the Act, in that case, the land in question could have vested in the State Government and in that event second sale by the erstwhile owners in favour of defendant No.16 itself is in violation of Section 23 of the Contract Act. In other words, if the sale deed executed in favour of the plaintiffs is impeached on the ground of violation of provisions of Section 63 of the Act in that case if the plaintiffs agreed for restoration of status quo ante within a period of three months from the date of the order in favour of the erstwhile

owners, in that case only the land can be restored to the erstwhile owners but if the plaintiffs in that situation do not agree in that case the land would automatically vests in the State Government as per the provisions of Section 84C of the Act. In that eventuality, the subsequent sale by erstwhile owners in favour of defendant No.16 is void ab-initio as the erstwhile owners had no title or possession over the suit land. Therefore, the contention of defendant No.16 itself is self-defeating and contradictory.

27. Pursuant to the execution of the sale deed in favour of the plaintiffs, mutation entry Nos.7201 to 7205 were entered in the village form No.6. Against the said entry, defendant No.16 filed objections contending that the the erstwhile owners sold the land to it on 28.1.1992. From this contention it becomes clear that the sale deed executed in favour of the plaintiffs was prior in point of time and against the entries made in the village form No.6 in favour of the

plaintiffs, defendant No.16 raised objections. However, mutation entry Nos.7006 to 7010 were made in favour of defendant No.16 also and all these entries i.e., entry Nos.7006 to 7010 made in favour of defendant No.16 were certified whereas entry Nos. 7201 to 7205 made in favour of the plaintiffs were transferred to dispute register and an order dated 20.3.1995 was passed against the plaintiffs. Against the said order, the plaintiffs preferred RTS Appeal Nos.82 of 1994-95, 44 to 49 of 1995-96. The said appeal came to be allowed by the Deputy Collector vide order dated 3.1.1996 and the entry Nos.7006 to 7010 made in favour of defendant No.16 were set aside whereas entry Nos.7201 to 7205 made in favour of the plaintiffs were approved. Against the said order, defendant No.16 filed Revision Application No.130 of 1996 before the Collector, Ahmedabad, who rejected the said revision application vide order dated 8.4.1996. Against the order of the Collector, Ahmedabad, defendant No.16 filed Revision Application No.12 of 1996 before the Special Secretary, Revenue Department,

who vide order dated 28.11.2003 rejected the said revision application and the said order has become final and conclusive as it was not further challenged. However, though review application was not maintainable, defendant No.16 also sought review of the order of the Special Secretary, Revenue Department, and the Special Secretary, Revenue Department rejected the said review applications vide order dated 16.2.2005 after holding that the issue of will has been concluded by this Court.

28. Looking to the aforesaid events, it becomes clear that though defendant No.16 was fully aware about the sale of the suit land prior in point of time made in favour of the plaintiffs on 5.3.1986, it purchased the same land vide sale deed dated 28.1.1992, from the erstwhile owners, who had no right whatsoever to sale the land after selling the said land to the plaintiffs on 5.3.1986. The entire proceedings have been concluded upto this Court and this Court has dealt with the issue relating to will in respect

of land situated at Ognaj village. Though this Court has concluded the said issue, defendant No.16 filed Review Application before the Special Secretary, Revenue Department, knowing fully well that review was not maintainable and ultimately the Special Secretary, Revenue Department, rejected the review applications.

29. From the above discussion, it becomes clear that the point raised by defendant No.16 and the erstwhile owners that the will executed by deceased Jyotiben on 17.2.1975 in favour of the plaintiffs was a product of fraud because according to them deceased Jyotiben had expired in the year 1968 and, therefore, deceased Jyotiben could not have executed the alleged will dated 17.2.1975, has no substance. This is the only point on which erstwhile owners and defendant No.16 dragged the plaintiffs to various courts and authorities. It may be noted that the present litigation is going on since last 12 years. One after the other, baseless litigation is being persuaded by defendant No.16 in active

collusion with erstwhile owners and same points are being canvassed repeatedly before various authorities as well as before the Courts. It may also be noted that neither the erstwhile owners nor defendant No.16 have succeeded in any of the proceedings. In all in about 20 proceedings they have lost concurrently and also lost conclusively in both the proceedings initiated under Section 84C of the Act in respect of the lands situated at Thaltej and Ognaj and the concerned authorities have held that the plaintiffs are agriculturists. Therefore, according to this court, by indirectly recasting of issues which are already decided by the competent forum can never be permitted and those issues are absolutely irrelevant since it has been already decided that the plaintiffs are agriculturists and the will executed by deceased Jyotiben in their favour was valid and genuine and on the basis of that will the plaintiffs acquired the status of agriculturists.

30. Now, coming to the four suits filed by the

plaintiffs being Regular Civil Suit Nos. 429 to 432 of 1995 before the learned Civil Judge (SD), Ahmedabad Rural, it may be noted that those suits were filed for perpetual injunction and for other ancillary reliefs. In the said suits, Panchnama was drawn and the plaintiffs were found to be in possession by the Court Commissioner. The plaintiffs have also filed application Ex.5 for ad-interim injunction during pendency of the suits against the erstwhile owners and the same application came to be allowed in their favour and thereby the erstwhile owners were injuncted from interfering with the possession of the plaintiffs. Against the said order the erstwhile owners filed Civil Misc. Appeal No.210 of 1997 before the District Court, Ahmedabad Rural and the District Court dismissed the appeal vide order dated 19.4.1999 by upholding the order passed by the trial court below application Ex.5 in favour of the plaintiffs. The order passed by the District Court, Ahmedabad Rural was also subject matter of challenge before this Court in Civil Revision Application No.1206 to 1208 of

1999. The said revision applications were permitted to be withdrawn by this Court vide order dated 12.7.2000 in view of the non-maintainability of the revision application by virtue of amendment made in Section 115 of the Code.

31. It is also required to be noted at this stage that defendant No.16 has also filed Regular Civil Suit No.458 of 1996 in the Civil Court (SD), Ahmedabad Rural against the plaintiffs as well as erstwhile owners. Though there was a caveat of the plaintiffs, fraudulently defendant No.16 obtained ex-parte interim relief with a view to dispossess the plaintiffs under the guise of the said ex-parte order. Against the said ex-parte interim relief, the plaintiffs filed Civil Misc. Appeal No.77 of 1995 in the District Court, Ahmedabad Rural in which panchnama was drawn and the plaintiffs were found to be in possession by the Court Commissioner. Therefore, in the said appeal ex-parte order passed by the learned Civil Judge (SD), Ahmedabad Rural was stayed and

ultimately vide order dated 4.2.2002, the District Court, Ahmedabad Rural set aside ex-parte order dated 5.6.1995 passed by the trial Judge in favour of defendant No.16. While passing the said order, the District Court made observations about the conduct of defendant No.16.

32. The suits filed by the plaintiffs and defendant No.16 are of the year 1995. After a period of ten years, defendant No.16 moved an application Ex.85 in Regular Civil Suit No.832 of 1995 for framing 20 additional issues which are as under:

> *"(1) Whether plaintiffs prove that on the date of their sale deed dt.5.3.1986 they were agriculturist as contemplated under the Bombay Tenancy Agricultural & Lands Act and/or Tenancy laws?*
>
> *(2) Whether the plaintiffs prove that Joitiben wd/o the Chaturdas Hirdas has executed the will dated 2.12.75?*

(3) Whether the plaintiffs prove that the alleged will dated 2.12.75 alleged to have been executed by Joitiben wd/o Chaturdas Hirdas is genuine & legal & valid?

(4) Whether the plaintiffs prove that under the alleged will dated 2.12.75 alleged to have been executed by Joitiben wd/o Chaturdas Hirdas they have become legatees and owner of the land survey No.966/1 Ognaj, Dist. Dascroi?

(5) Whether plaintiffs prove that under the alleged will date 2.12.75 alleged to have been executed by Joitiben wd/o Chaturdas Hirdas they have become lawful agriculturists?

(6) Whether defendant No.16 proves that alleged will dated 2.12.75 alleged to have been executed by Joitiben wd/o Chaturdas Hirdas in favour of plaintiffs is not genuine, valid and legal?

(7) Whether the defendant No.16 proves that the alleged will dt.2.12.75 alleged to have been executed by Joitiben wd/o Chaturdas Hirdas is fraudulent, fabricated and concocted and illegal

and void?

(8) Whether the defendant No.16 proves that the plaintiffs have played fraud on Revenue and Tenancy Courts and Revenue and Tenancy Authorities and Courts as alleged in their written statement?

(9) Whether defendant No.16 proves that the plaintiffs have played fraud on statute by illegal procedure & process and illegal methods to purchase agricultural suit lands as alleged in the w/s?

(10) Whether the defendant No.16 proves that various orders & judgments obtained by plaintiffs from Revenue and Tenancy Courts and also from civil courts and High Court are full of misrepresentation, suppression of material facts and fraud?

(11) Whether the defendant No.16 proves that Ganesh Sagar Co.Op. Housing Society Ltd., was converted into Ganesh Sagar Infrastructure Pvt. Ltd. and that the said company was legally registered under the Companies Act, 1956 and

that said Company acquired all assets dues and liabilities and all property rights and all other rights of the society, and that said Company had become lawful owner of suit lands?

(12) Whether deft. No.16 proves that Ganesh Sagar Co.Op. Housing Society was a lawful purchaser of the suit lands and that said society was in lawful possession of the suit lands as stated in para 14 of the w/s.?

(13) Whether the deft. No.16 proves that plaintiffs got their possession of suit land is noted falsely and illegally and by misrepresentations and by suppression of material facts through commissioner of the court as alleged in para 14 of the w/s?

(14) Whether plaintiffs prove the facts stated in the plaint?

(15) Whether the plaintiffs prove that they have become owner of the suit lands in virtue of sale deed dated 5.3.1986?

(16) Whether plaintiffs prove the cause of action

alleged in the plaint?

(17) Whether the suit suffers from non-joinder of necessary parties?

(18) Whether the plaintiff's suit is barred by estoppal and laches & waiver?

(19) Whether plaintiffs are entitled to injunction as prayed for?

(20) What order and Decree?"

33. The learned trial Judge after having heard the learned advocates appearing for the parties, allowed the application Ex.85 partly and thereby added proposed issue Nos.2, 3 and 10 in the application as issue Nos.6-A, 6-B and 6-C in the issues framed vide Ex.50 which are absolutely baseless and irrelevant as the said three issues have been already decided in revenue proceedings by the revenue authorities which have been confirmed upto this Court because these issues and also the issue No.10 are abusive and

undermining the judgments rendered by the revenue authorities which have been affirmed by this Court.

34. The end product of the aforesaid discussion can be summarised as under:

(i) The will of the deceased Jyotiben in respect of the land situated at Ognaj village which was executed on 17.2.1975 in favour of the plaintiffs was held to be valid and genuine and on the basis of the said will the plaintiffs have become agriculturists. In the said will Mafatlal Patel, who is son of deceased Jyotiben has signed as witness. On the said will of deceased Jyotiben, there is a seal of Deputy Collector and Mamlatdar, Ahmedabad before whom the will was executed on 2.12.1975.

(ii)The investigating officer found that the complaints had taken advantage of another Jyotiben who was residing in the same village Thaltej where the complainant's marital grand-

mother was living.

(iii) The criminal court refused to believe the death certificate pertaining to deceased Jyotiben who has executed the will in question.

(iv) Certificate of the sarpanch of village Ognaj was also relied upon and ultimately the Court accepted 'C' summary vide order dated 25.11.1998 and refused to believe the allegations that the plaintiffs have committed criminal offence.

(v) On the basis of the will executed by deceased Jyotiben in favour of the plaintiffs, the plaintiffs have acquired the status of agriculturists and, therefore, the transaction between the plaintiffs and the erstwhile owners in respect of the suit land is not hit by the provisions of Section 63 of the Act.

(vi) The plaintiffs are purchasers of the suit land prior in point of time whereas defendant No.16 is the purchaser of the suit land later in

point of time knowing fully well that the plaintiffs have already purchased the suit land way back in the year 1986.

35. In aforesaid view of the matter, the additional issues i.e., issue Nos.6-A, 6-B and 6-C raised by the learned trial Judge is thoroughly irrelevant and they have no bearing to the facts of the present case as those issues are with regard to the point which has already been decided and concluded by the authorities upto this Court which cannot be examined again and again at the instance of defendant No.16, who is the subsequent purchaser of the suit land.

36. At the cost of repetition, be it stated that so far as the three issues added in the issues framed at Ex.50 by the trial court are concerned, they are already concluded by the competent tenancy court, civil court and this court and, therefore, they have reached finality and recasting of the said issues is a abuse of process of law in the context of the facts and

circumstances emerging from the record of the case. So far as the remaining 17 issues are concerned, they are thoroughly irrelevant and have no bearing to the facts of the present case.

37. It is shocking to note that so far as the additional issue raised at 6-C is concerned, it is absolutely misconceived. The said issue relates to the orders of the revenue and tenancy authorities and civil court as well as this Court are full of misrepresentation, suppression of material facts and fraud. How such an issue can be framed when all the orders have reached finality upto High Court and no one i.e., either erstwhile owners or defendant No.16 has challenged the said order in the Supreme Court. If this issue is allowed to be formulated then it would run counter to the hierarchy system which cannot be permitted by this Court.

38. The contention that defendant No.16 was not made party in several proceedings and, therefore, the orders passed by various authorities

including the revenue, civil court as well as this Court cannot be used against it by the plaintiffs and, therefore, it is open for defendant No.16 to raise the said points again and again in the competent civil court which has to decide as to whether the plaintiffs were agriculturists at the relevant time, has no substance. At the cost of repetition, be it stated that directly or indirectly defendant No.16 was a party in all the proceedings before the revenue authority as well as this Court. It has purchased the suit land from the erstwhile owners knowing fully well that the plaintiffs have already purchased the suit land in the year 1986. Defendant No.16 has also joined erstwhile owners in several proceedings filed against the plaintiffs. It had also initiated various separate proceedings before different authorities, therefore, it is within its knowledge about all the orders passed in various proceedings which have reached the finality.

39. The contention that in the substantive

proceedings, defendant No.16 has made an application to add the issues and, therefore, the learned trial Judge ought to have framed all the issues as per the prayer made in application Ex.85 by defendant No.16, but the learned trial Judge has added only three issues and according to defendant No.16, the learned trial Judge has rightly added the three additional issues, has no substance. So far as framing of additional issues is concerned, they are relating to alleged forged will executed by deceased Jyotiben in favour of the plaintiffs and initiation of proceedings under Section 84C of the Act on the basis of the will before the Revenue Authorities and also orders of revenue and tenancy authorities and civil court as well as this Court are full of misrepresentation, suppression of material facts and fraud. All the proceedings initiated against the plaintiffs have been concluded in favour of the plaintiffs upto High Court. Therefore, at the cost of repetition, be it stated that in all the proceedings initiated either by the erstwhile owners or defendant No.16 with regard to creation

of forged will and on the basis of that claiming the status of agriculturists by the plaintiffs has reached finality by deciding in favour of the plaintiffs and therefore framing of three issues out of twenty issues proposed in the application Ex.85 is totally irrelevant, misconceived and, therefore, it has to be held that they are sought to be framed with a view to delay the trial of the four suits filed by the plaintiffs.

40. In the foregoing paragraphs, it has also been held that so far as the challenge against the will executed by Jyotiben in favour of the plaintiffs and on the basis of that the plaintiffs have claimed status of agriculturists has been proved in favour of the plaintiffs and it is held that the will executed by deceased Jyotiben in favour of the plaintiffs is genuine and 84C proceedings also have been decided in favour of the plaintiffs and therefore now civil court has no authority and jurisdiction to decide the said questions.

41. At the cost of repetition, it may be again stated that if at all 84C proceedings initiated by the erstwhile owners against the plaintiffs would have been held against the plaintiffs in that case as per the provisions of Section 84C of the Act the land would have vested in the State Government unless the plaintiffs would have consented to vest to the erstwhile owner and in that case the erstwhile owners would not have any right to execute subsequent sale deed in respect of the same land in favour of defendant No.16, as the erstwhile owners had neither title nor possession over the suit land therefore, execution of the sale deed in favour of defendant No.16 by the erstwhile owners when there was a previous sale deed executed in favour of the plaintiffs was very much in existence which has been declared legal as the plaintiffs have acquired status of agriculturists pursuant to the will of Jyotiben, obviously, it will have to be prima facie held that subsequent sale deed entered into between defendant No.16 and the erstwhile owners cannot be said to be a legal and

valid one.

42. On over all view of the matter, according to this Court, all the issues which have been proposed in application Ex.85 have been concluded in various proceedings by the revenue authority, which is the competent authority and the order passed by the revenue authority has been confirmed by this Court. In that view of the matter, the application Ex.85 is thoroughly misconceived and deserves to be rejected in toto. Therefore, the order passed in application Ex.85 framing three additional issues deserves to be quashed and set aside by rejecting application Ex.85 in toto.

43. It is very shocking state of affairs that the four suits which have been filed by the plaintiffs against the erstwhile owners as well as defendant No.16 in the year 1995 and one suit filed by defendant No.16 against the plaintiffs and the erstwhile owners in the year 1995 are awaited for trial since more than ten years (a

decade) and while deciding Misc. Civil Appeal No.77 of 1995, the learned District Judge, Ahmedabad Rural, had expressed desire to dispose of the suits immediately and the learned advocate of defendant No.16 also gave assurance to the Court to co-operate for expeditious disposal of the suit. However, the said suits have not been proceeded for hearing and the matters have been delayed somehow or the other. Therefore, it is expected of the learned Civil Judge (SD), Ahmedabad Rural before whom the said suits are pending for final disposal shall give top priority to the hearing of the suit by consolidating all of them after recording evidence in common and dispose of all the suits as early as possible. The learned District Judge, Ahmedabad Rural is also directed that if the aforesaid five suits are pending before different courts then he shall pass administrative order to place all those five suits before one Judge who shall pass the order consolidating all the suits and shall dispose of them after recording the evidence in common, as

expeditiously as possible, without giving any countenance to the applications filed by either of the parties at interlocutory stage as such a stage has now gone.

44. For the foregoing reasons, Special Civil Application No.9843 of 2006 filed by the plaintiffs succeeds and accordingly it is allowed with no order as to costs whereas Special Civil Application No.13040 of 2006 fails and accordingly it is rejected with no order as to costs.

As a consequence of this order, the impugned order dated 23.2.2006 recorded by the learned Civil Judge (SD), Ahmedabad Rural below application Ex.85 in Regular Civil Suit No.432 of 1995, by which three additional issues have been added in the issues already framed vide Ex.50, is quashed and set aside and the application Ex.85 is rejected in toto.

Rule issued in Special Civil Application

No.9843 of 2006 is made absolute whereas rule issued in Special Civil Application No.13040 of 2006 is discharged.

45. The learned District Judge, Ahmedabad Rural is directed to pass administrative order to place all the five suits before one court i.e., Civil Judge (SD), Ahmedabad Rural and the concerned Judge before whom all the five suits will be placed fir trial shall pass order for consolidation of the suits and then record the evidence in common and shall conclude the hearing of the suits including the judgment latest by 31.12.2006 without fail. The learned trial Judge is also directed to make report compliance to this Court with regard to the disposal of the suit.

46. It is expected of the learned advocates appearing for the parties before the trial court that they should cooperate with the concerned Civil Judge for expeditious disposal of the suits by rendering all the assistance to the Court

without causing any hindrance and obstacle in the expeditious disposal of the suits so that the learned trial Judge can dispose of all the suits on or before 31.12.2006 as per the directions issued by this Court.

The Registry is directed to send a copy of this order to the learned Principal District Judge as well as Principal Senior Civil Judge of Ahmedabad Rural at Navrangpura to do the needful at their end and for compliance of the order passed by this Court.

47. At this stage, Mr. BJ Shelat, learned advocate of defendant No.16, states that defendant No.16 is desirous of filing appeal against the order of this Court before higher forum. He, therefore, urged that the order passed by this Court may be stayed for a period of six weeks to enable defendant No.16 to approach higher forum.

48. The aforesaid request of Mr. Shelat, learned

advocate of defendant No.16, is seriously objected by Mr. AJ Patel, learned advocate of the plaintiffs, contending that all the suits are of the year 1995 and this Court has issued direction to the learned Civil Judge (SD), Ahmedabad Rural for expeditious disposal of the civil suits. If the prayer made by Mr. Shelat is accepted then it would run counter to the order passed by this Court. He, therefore, urged to reject the request of Mr. Shelat for granting stay of this order.

49. This Court has considered the request made by Mr. BJ Shelat, learned advocate of defendant No.16 and the objections raised by Mr. AJ Patel, learned advocate of the plaintiffs. On the facts and in the circumstances emerging from the record of the case, this Court has quashed and set aside the order dated 23.2.2006 passed by the learned Civil Judge (SD), Ahmedabad Rural at Navrangpura, below application Ex.85 in Regular Civil Suit No.432 of 1995 by which three additional issues have been framed which are totally irrelevant for deciding the issues raised in the suits. This

Court has also directed the learned Civil Judge (SD), Ahmedabad Rural for expeditious disposal of the suits and conclude the trial on or before 31.12.2006. Therefore, if the prayer made by Mr. Shelat is granted, it would run counter to the direction issued by this Court as by granting stay as prayed for by Mr. Shelat, learned advocate of defendant No.16, the trial of the suits would be again unnecessarily delayed.

50. In aforesaid view of the matter, the prayer made by Mr. BJ Shelat, learned advocate of defendant No.16 for stay of the order passed by this Court to enable defendant No.16 to approach higher forum cannot be granted and hence the same is rejected.

(A.M. Kapadia, J.)

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